FILED
(2) 98 236 MAY 7 1998
OFFICE OF THE CLERK

No. _____

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1997

Paul W. Graber, et al.,

Petitioners,

v.

United States of America, Stephen Stalcup, Individually and Officially, et al.,

Respondents.

Appendix A

ON WRIT OF CERTIORARI FROM
THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Paul W. Graber, et al.,
c/o 205 Washington Ave
Fairfield, Iowa 52556
515-469-6225

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19 pp

JURISDICTION

This is a Civil Claim for Damage action for certain unauthorized collection actions by the United States, et al., as well as those named and unnamed individuals within and without their official capacity employed and hidden by United States, et al. The 16th amendment to the United States Constitution in no way authorizes revocation of the 13th amendment, whatsoever.

This court has jurisdiction pursuant to 28 U.S.C, section 1340, 26 U.S.C. section 7433. Treasury Claims pursuant to 26 CFR 301.7433 have been duly filed by all Plaintiffs. No administrative remedy exists within any other statute for purposes of this action except at 26 U.S.C. 7433. No decision was presented by the Defendants in opposition to said Claims, whatsoever. The Sovereign Immunity of the United States is officially waived pursuant to the Defendants' decision to remain silent for a period of six months as specified at 26 CFR 301.7433-1(d)ii and therefore judgement is assured.

THE PARTIES

1. For purpose of the Federal Income Tax, Plaintiffs Paul W. Graber, et al., are members of a class of people (U.S. Citizens, Residents Aliens, and/or Non-resident Aliens) who at no time during the taxable year are engaged in a trade or business within the United States, and are so defined at 26 CFR 1.871-1(b)(i). All U.S obligations received by the Petitioners are gross securities defined at 26 U.S.C. 165(g) from sources without the United States.

2. On information and belief, Defendants United States, et al., are acting as agents of a foreign principal and not agents of the United States Government. The Defendant United States has employed and or devised schemes (hereinafter referred to as scheme) which purports to compel the voluntary compliance of the Plaintiffs with respect to the 16th amendment to the United States Constitution [codified at 26 U.S.C]. Said scheme purports to be successful upon the United States receiving a 1040 U.S. Individual Income Tax Return from the Plaintiffs which by label "elects" the Plaintiffs to be treated as subjects of the Internal Revenue tax.

3. On information and belief, Defendants named individually are in part, acting as Officers, Agents, Special Agents, or Employees of the United States Government in concert with others for the purpose of compelling the "scheme" implemented as their belief as to what the United States laws require. Fraud, coercion, fear and extortion are instruments of deception used by these Defendants for the purpose of compelling their "scheme".

4. On information and belief, Defendants individually are acting in part, outside their official capacity for the purpose of compelling their "scheme" and as such are personally liable for their conduct to the Plaintiffs. The Plaintiffs are unaware of any Law which would authorize acts against the free will of the Plaintiffs due to the substantial effect of the 13th amendment.

5. On information and belief, the 13th amendment is conclusive and remains without exception. U.S. Citizens, Resident Aliens, and Non-resident Aliens, are all beneficiaries to the 13th amendment. U.S. Citizens, Resident Aliens, and Non-resident Aliens, are all potential targets of the "voluntary compliance scheme".

NATURE OF CLAIM

6. Plaintiffs bring this action pursuant to 26 CFR 1.6013.6(b) and 1.871-10(d), thereby "electing" to revoke all 1040 Form elections to be treated as "residents" of the United States and to "treat real property income as effectively connected within the United States". Plaintiffs' claim for damages arose from fraud, coercion, and fear of the Defendants, thereby creating a mistake of law on the part of the Plaintiffs (See Exhibit A). The Defendants by supposed Sovereignty, have confined the Plaintiffs into **INVOLUNTARY SERVITUDE** in violation to the Thirteenth Amendment to the United States Constitution.

7. The amount of Judgement Damage award claimed is One Million Dollars of value and the direct economic damages sought is Twenty Million Dollars of value per each Claimant. The Defendants remain without opposition to Plaintiffs' Treasury Claims, thus the United States agrees for judgment in favor of Plaintiffs. (26 U.S.C. 7433(b). Exhaustion of all Administrative Remedies (26 U.S.C. 7433(d)1) has occurred, consent to suit exists within said record, and thus the United States sovereign immunity is waived pursuant to this action.

BACKGROUND

8. In 1865, the 13th Amendment was adopted to the United States Constitution, signed and authorized by the President of the United States at that time, Abe Lincoln. The 13th amendment states:

> "Neither slavery nor involuntary servitude...shall exist in the United States or any place subject to their jurisdiction..."

9. On information and belief, Congress has jurisdiction over all things subject to their jurisdiction.

10. On information and belief, Congress passed the Corporation Income Tax Act of 1909. This act is thus subject to the Jurisdiction of the United States.

11. On February 25, 1913, Philander C. Knox, Secretary of State of the United States of America, published in the PRIVATE LAW of the UNITED STATES OF AMERICA by the SIXTY-SECOND CONGRESS, 1911-1913, on page 1785, his proclamation that the Sixteenth (16th) Amendment had been ratified by the states, thereby authorizing Congress to tax income under the Corporation Income Tax Act of 1909 on Federal Corporations (Subjects of Congress).

12. On information and belief, the Supreme Court of the United States ruled that: "This Amendment does not extend the taxing power to new subjects, ----". BRUSHABER v. UNION PACIFIC R. CO., 240 U.S. 1, 60 L.ed 493, 36 S. Ct. 236; STANTON v. BALTIC MINING CO., 240 U.S. 103, 60 L. ed 546, 36 S.Ct 278. The term "taxpayer" is defined at 26 U.S.C.[1988] 7701(a)(14) as any person subject to the Internal Revenue tax.

13. On information and belief, Congress passed 26 U.S.C. section 6013(a)(1) which states that "no joint return shall be made if either the husband or the wife at any time during the taxable year is a nonresident alien;".

14. On information and belief, Congress also made provision at 26 U.S.C. sec. 6013(g)(h) for a nonresident alien to "elect" to be treated as a resident of the United States (subject to Congress). Thus, the voluntary nature of the Federal Income Tax comes into play.

15. On information and belief, Plaintiffs are unaware of any constitutional authority for Congress or any part of the federal government to make any adhesion contract that would take away the sovereignty of the people or states of the Union. Therefore, the Defendant's reliance upon writing and/or making of "word-of-art" definitions in statutes and/or regulations that entrap the sovereigns is clearly unconstitutional.

16. Methods promoted by Congress that seek the voluntary election of a People in procuring subject status with the United States [**26 U.S.C. 7701(A)(14) "taxpayer defined"; "the term taxpayer means any person subject to the Internal Revenue tax"**], should and is clearly only held by the United States at the discretion and meaning of the term voluntary subjection (**servitude**). Once "taxpayers" elect to revoke said voluntary election (servitude), said People are no longer considered subjects to the Internal Revenue tax by **LAW**.

17. On information and belief, the Secretary also made provision, at 26 CFR 1.6013-6(b) for "An election under this section shall terminate if either spouse revokes the election"; and 1.871-10(d)(1) or (2) whereby a decision to revoke an "election" may be made with or without the consent of the Commissioner. Construction of the Statutes otherwise establishes **Congressional Acts of INVOLUNTARY SERVITUDE [Slavery] in direct violation to the 13th amendment.**

18. On information and belief, based upon the complexities of the tax Laws, Plaintiffs are unaware of any statutes, rules, or regulations which would compel the "voluntary compliance scheme" employed by the plaintiffs to file any U.S. Individual Income Tax Returns. The United States enjoins such schemes in an attempt to further coerce Plaintiffs (People) into "voluntary servitude".

19. Servitude and subjection have synonymous meanings.

COUNT I

20. On information and belief, the Defendants have recklessly and intentionally disregarded the provisions of title 26 section 6013(g)(h), 871(d) and the regulations promulgated thereunder and have refused, by fraud, coercion, fear to allow the Plaintiffs their rights to revoke the original Forms 1040 "elections" for all tax years ab initio, pursuant to 26 CFR 1.6013-6(b) and 1.871-10(d)(1), which were obtained by the Defendants involving purported acts of a voluntary nature (SEE 2nd Codicil attached within Exhibit A.

21. The actions of the Defendants have been reckless and intentional, with no statute or regulation authority, and have caused and are causing the Plaintiffs to suffer Slavery, and much financial damage.

COUNT II

22. The Defendants, have in part, within their official capacities and in part without official capacities, consciously, knowingly and willingly placed each Plaintiff herein under involuntary subjection to the 16th amendment, in violation of the 13th amendment to the Constitution for the United States of America.

CONCLUSION

Wherefore, Plaintiffs, Paul W. Graber, et al, request that this court enter judgement in its favor and against the Defendants and hereby claim actual, direct economic damages as a proximate result of the reckless and/or intentional actions of the Defendants, pursuant to exhaustion of all administrative remedy pursuant to 26 U.S.C. § 7433(d)1. Judgement according to Treasury Claims 26 CFR 301.7433 is justifiably adequate as calculated; twenty-one million multiplied by thirty-one Plaintiffs equals Six Hundred Fifty Million Dollars of Value.

SEE SIGNATURE PAGE LIST ATTACHED

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

Paul W. Graber, et al

v. C.N. 4-96-7-785

United States, et al

FINDINGS AND ORDER FOR PENALTY JUDGMENT

Plaintiffs, 32 residents of Iowa, filed a pro se complaint for damages against the United States and numerous government employees under 26 U.S.C. § 7433. Essentially, plaintiffs allege that the filing of federal income tax returns and the payment of federal income taxes is voluntary, and that defendants' refusal to permit plaintiffs to "revoke" their "elections" to pay federal income taxes constitutes a violation of the involuntary servitude prohibition of the 13th Amendment to the United States Constitution. Plaintiffs sought damages in the amount of $ 672,000,000, $ 21,000,000 for each plaintiff.

I granted the defendants' motion to dismiss the action for failure to state a claim upon which relief can be Granted. Finding that the positions maintained by plaintiffs in their complaint were frivolous and groundless, I also granted defendants' motion for summary judgment on their counterclaim for judgment against each plaintiff for a penalty not in excess of $10,000 pursuant to 26 U.S.C. § 6673b-1.

On August 13, 1997, after notice to all fo the parties, I conducted a hearing to determine the appropriate amount of

penalty, if any, to be imposed on each plaintiff. The defendants were represented by Joan Stentiford Ulmer, Trial Attorney, Tax Division, United States Department of Justice, and Gary Hayward, Assistant United States Attorney for the Southern District of Iowa. All plaintiffs appeared except Donna Miller, Dorothy Stout, Samuel Z. Strong, Jr., Roger W. Roth, Wilda J. Ubben, Mary V. Miller, Denise Smith, Johnny M. Smith, Mary J. Burke, Thomas Burke, Norma Miller, Milton T. Leonard, Jacob W. Schrock, Joan L. Miller, and Thomas Joseph Stecklein. The husbands of Donna Miller, Dorothy Stout, Wilda J. Ubben, Mary V. Miller, Norma Miller, and Joan L. Miller are also plaintiffs and they did appear and spoke for their absent spouses as well as speaking for themselves. All plaintiff are pro-se.

GOVERNING PRINCIPLES

Section 6673(b)(1) of the I.R.C. provides:

> Whenever it appears to the court that the Taxpayer's position in the proceeding before the court instituted or maintained by such taxpayer under section 7433 is frivolous and groundless the court may require the taxpayer to pay to the United States a penalty not in excess of $ 10,000.

26 U.S.C. § 6673(b)(1).

In determining whether to assess a penalty and, if so, the amount thereof, the case of May v. CIR. 752 F.2d 1301 (8th Cir. 1985), is instructive. May involved an earlier version of 6673(a) that empowered the Tax Court to award "damages" if the

taxpayer instituted or maintained frivolous and groundless proceedings. The court stated:

> [W]e think sanctions are properly imposed for the filing of frivolous actions or the bringing of frivolous appeals only in those instance in which it is incontrovertible that the taxpayer did not institute the action or bring the appeal in good faith because he knew or should have known that the claim or argument was frivolous***

Id. at 1306-07. The Court noted that an assessment under section 6673 is appropriate against taxpayers who have filed successive petitions raising the same arguments, even though the arguments had been rejected in prior suits and the taxpayer informed that the arguments were frivolous, and in cases brought by persons who belong to organized tax protest organizations whose members inundated the courts with hundreds of similar petitions. Id. at 1307-08.

The court went on to observe:

> The mere filing of a frivolous petition, absent a finding that the taxpayer had knowledge that the petition was frivolous ***, is a legally insufficient ground upon which to justify the imposition of section 6673 damages. The possibility still exists that a pro se taxpayer may, in good faith, file a petition raising these types of arguments without the actual or imputed knowledge that they

are frivolous. Unless that petitioner subsequently becomes aware that his petition is frivolous, and yet continues to maintain the proceeding, he should not be subject to section 6673 damages. See Grimes v. Commissioner, 82 T.C. 235, 238-39 *1984). We have little doubt but that such a case will be exceedingly rare and that the great bulk of these petitions burdening the district courts and the Tax Court are filed by Tax Protestors who, notwithstanding a sincere belief in the validity of their claims, know that these arguments have been rejected as frivolous***. Whatever the reason, we emphatically agree that section 6673 damages are appropriate in such cases--either as a penalty for abuse of process, or as a fee for using the courts as their personal "soapbox."

EVIDENTIARY FACTS

This case is not the first time that plaintiff Paul W. Graber has made frivolous and groundless assertions in this court in an effort to avoid meeting his responsibilities as a taxpayer. See United States v. Paul W. Graber, No. M-1-83, an IRS summons enforcement proceeding in which Judge Longstaff rejected Mr. Graber's theories as being "without any legal or rational basis," and dismissed his counterclaim for damages (order of May 15, 1996), and in which Mr. Graber was ultimately found to be in contempt of court for his failure to comply with Judge Longstaff's May 15, 1996, order granting the petition of IRS to enforce its summons.

At the August 13th hearing, the government submitted Exhibit 1, a brief synopsis of other cases involving some of the plaintiffs, but the synopsis of these cases does not support the government's contention that the plaintiffs who were involved in those cases "are experienced litigants and have previously brought lawsuits based on arguments characterized in judicial decisions as protester-type meritless arguments such as are involved in the instant litigation." (Statement of Federal Defendants in Support of Penalties, page 2.) Defendants do not offer any records from these cases, and it would be speculation for me to reach the conclusion from Exhibit 1 that the government wants me to reach.

The information presented at the August 13 hearing demonstrates that plaintiff Paul W. Graber played a very active role in bringing and maintaining plaintiffs' lawsuit. He acted as scrivener, preparing and filing the various papers filed by plaintiffs.

The information presented at the August 13 hearing discloses that the plaintiffs, while perhaps not forming or joining an identifiable tax protester organization, frequently got together at meetings and discussed and studied the laws relating to income taxes. None ever consulted a lawyer about the merits of the theories they advanced in their complaint.

Plaintiff Paul W. Graber and all the plaintiffs who were present at the hearing expressed the view that the lawsuit could be been avoided if the Internal Revenue Service had responded to administrative claims filed by them seeking millions of dollars of damages. (The administrative

claims are, on their face, frivolous and groundless.)

ULTIMATE FINDINGS AND CONCLUSION

I find and conclude that plaintiff Paul W. Graber, even if he sincerely believes that his claims are valid (which I doubt), knew when he commenced this lawsuit that such arguments have repeatedly been rejected by the courts as frivolous.

I further find and conclude that the other 31 plaintiffs, even if they sincerely believe that their claims are valid (which I doubt), knew, or most certainly should have known, that their claims would be rejected as frivolous. the met and they studied the tax laws. If they studied the tax laws--and I do not question that they did--it had to be apparent to them that the theories they advanced in their complaint were frivolous and groundless. To put it bluntly, the claims are just plain goofy, and any person except one purposely self-deluding himself or herself would know that. None of the plaintiffs brought their suit in good faith.

All the plaintiffs will be assessed a penalty. Because of Paul W. Graber's past experience in Case No. M-1-83 and his leading role in filing this lawsuit, he will be penalized a significantly greater amount than the other plaintiffs. The total of the penalties no doubt falls far short of the total cost to the taxpayers of dealing with this litigation, taking into account the expenditures of Justice Department and court resources. I believe, however, that the penalties are sufficient to penalize plaintiffs and deter them and others from filing such frivolous and groundless lawsuits in the future, but not

so great as to financially damage them to an unreasonable extent.

ORDER FOR PENALTY

Plaintiff Paul W. Graber shall pay to the United States a penalty in the amount of $ 5,000.00 and the clerk shall enter judgement against him and in favor of the United States in that amount.

Each of the other 31 plaintiffs, William Miller, Donna Miller, William Stout, Dorothy Stout, John Hixson, Enos C. Miller, Samuel Z. Strong, Jr., Roger W. Roth, Herman L. Ubben, Wilda J. Ubben, Mary V. Miller, Albert C. Miller, Denise Smith, Johnny M. Smith, Sally Lynn Webster, Mary J. Burke, Thomas Burke, Norma Miller, Ezra M. Miller, Milton T. Leonard, Mark C. Walker, Keith Wander, Sandra Wander, Gerald J. Wander, Edward Jirak, Jacob W. Schrock, Chris Krise, Renee Krise, Donald D. Miller, John L. Miller and Thomas Joseph Stecklein, shall pay to the United States a penalty in the amount of $ 1,000.00, and the clerk shall enter judgment against each of them and in favor of the United States in that amount.

Dated this 15th day of August, 1997

Signed Harold D. Vietor
Senior U.S. District Judge

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTIRC OF IOWA
CENTRAL DIVISION

Paul W. Graber, et al,

v. CaseNo. 4-96-cv-70785

United States, et al.,

JUDGEMENT IN A CIVIL CASE

x **Decision by Court** This action came to consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED:

Judgment shall be entered for the Defendant United States of America and against Plaintiff Paul W. Graber. Plaintiff shall pay to the United States a penalty in the amount of $ 5,000.00.

IT IS FURTHER ORDERED judgement shall be entered for the Defendant United States of America and against each of the other 31 plaintiffs, William Miller, Donna Miller, William Stout, Dorothy Stout, John Hixson, Enos C. Miller, Samuel Z. Strong, Jr., Roger W. Roth, Herman L. Ubben, Wilda J. Ubben, Mary V. Miller, Albert C. Miller, Denise Smith, Johnny M. Smith, Sally Lynn Webster, Mary J. Burke, Thomas Burke, Norma Miller, Ezra M. Miller, Milton T. Leonard, Mark C. Walker, Keith Wander, Sandra Wander, Gerald J. Wander, Edward Jirak, Jacob W. Schrock, Chris Krise, Renee Krise, Donald D. Miller, John L. Miller and Thomas Joseph Stecklein. Each of the other 31

plaintiffs shall pay to the United States a penalty in the amount of $ 1,000.00.

Dated this 15th day of August, 1997

James R. Rosenbaum
Clerk

Debbie Ryan
(by) Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHER DISTRICT OF IOWA
CENTRAL DIVISION

Paul W. Graber, et al.,	)
	)
Plaintiffs,	)
	)
Civil No. 4:96-CV-70785	)
v.	)
	)
United States, et al.,	)
	)
Defendants.	)

NOTICE OF APPEAL

Notice is hereby given that Paul W. Graber, William Miller, Donna Miller, William Stout, Dorothy Stout, John Hixon, Enos C. Miller, Samuel Z. Strong J., Roger W. Roth, Herman L. Ubben, Wilda J. Ubben, Mary V. Miller, Albert C. Miller, Denise Smith, Johnny M. Smith, Sally Lynn webster, Mary J. Burke, Thomas Burke, Norma Miller, Ezra M. Miller, Milton T. Leonard, Mark C. Walker, Keith Wander, Edward Jirak, Sandra E. Wander, Gerald J. Wander, Jack W. Schrock hereby appeals to the United States Court of Appeals for the Federal Circuit from all parts of the decision involving the Order of the Court in the above captioned proceeding on the 15th day of August, 1997, relating to the rule of apportionment with regard to taxes upon U.S. Currency as Securities of the United States at 165(g), the 16th amendment, the 13th amendment and others.

Respectfully submitted

10-13-97 SEE SIGNATURE PAGES

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 97-3866

Paul W. Graber, et al.,

vs

United States of America, et al.,

Appeal from the Southern District of Iowa

JUDGEMENT

This court has reviewed the original file of the United States District Court in the Southern District of Iowa. the Government's Motion for Summary Affirmance is denied and on the Courts own Motion the Case is affirmed under 8th Circuit rule 47(A)(a).

Dated February 6, 1998

Order entered at the direction of the Court.

Signed by the Clerk

Michael E. Gans